IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.5320 OF 2006
IN
FIRST APPEAL NO.162 OF 2005

Subhash Mohanrao Dubale ...Applicant

Versus

Janakibai Mohanrao Dubale & Ors. ...Respondents

Shri S.S. Patwardhan for the Applicant.

Shri P.P. Chavan i/by Madekar & Co for the Respondent No.5.

CORAM : A. S. OKA, J.

DATE : JANUARY 11, 2007.

P.C.:

1. The prayer in this Application is for appointment of receiver in respect of the suit property in possession of the Respondent No.5 (Defendant No.5). In the alternative, the Applicant has prayed for temporary injunction restraining the Respondent No.5 from disposing of or alienating the said property. The Applicant is the original Plaintiff. The suit filed by the Applicant for declaration, partition and other reliefs has been dismissed by the Trial Court. The First Appeal has been admitted for final hearing. The fifth Respondent has purchased the property in question before the institution of the suit. My attention has

been invited to the order dated 20th April, 2005 in Civil Application No.289 of 2005 taken out by the Applicant. This court did not grant injunction in favour of the Applicant as prayed in the said Application. However, the fifth Respondent was directed to deposit in this court a sum of Rs.5,00,000/- representing the share of the Applicant in the property in question. It is not in dispute that the said amount has been deposited by the fifth Respondent. Today, the fifth Respondent has filed an undertaking of its Director Shri Sagar Engineer which is duly affirmed. In paragraph No.4 of the said undertaking it is stated thus:

> "4. I undertake to this Hon'ble Court in the event of Respondent No.5 disposing off the said property, Respondent No.5 will inform the Intending Purchaser of the present proceedings pending in this Hon'ble Court and that the proposed transaction will be subject to the said litigation".

2. The suit filed by the Applicant has been dismissed on merits. The fifth Respondent has already

deposited a sum of Rs.5,00,000/- in this court. In view of this factual position, the undertaking which is referred to above will sufficiently protect the interests of the Applicant.

3. Hence, I pass the following order:

(i) Undertaking which is referred to above is accepted.

(ii) In view of the undertaking, no relief is granted in favour of the Applicant and the Application is disposed of.

JUDGE